

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.02.2019
CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.27468 of 2017

M.Sundara Vadivel

...Petitioner

Vs

1.The Chief Educational Officer,
Collectorate Campus,
Salem - 636 001.

2.The District Elementary Educational Officer,
District Library Campus,
Salem - 636 007.

3.The Assistant Elementary Educational Officer,
O/o The Assistant Elementary Educational Officer,
Panamarathupatty Post,
Salem.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records comprised in Na.Ka.No.421/A4/2015 dated 08.12.2015 on the file of the 3rd respondent quash the same and consequently direct the respondents to consider the application of the petitioner dated 31.12.2009 without insisting upon the original certificates as sought for in the impugned order dated 08.12.2015.

For Petitioner : Mr.P.K.Harinath Babu

For Respondents: Mr.M.Elumalai, Government Advocate

O R D E R

This writ petition is filed challenging the order of the 3rd respondent dated 08.11.2015 rejecting the petitioner's request for compassionate appointment and consequently, for a direction to the respondents to consider his application dated 31.12.2009 for compassionate appointment, without insisting upon the production of original certificates once again as sought for in the impugned order.

2. Heard both sides.

3. The petitioner's father, by name Late P.Madhavan was

working as Headmaster of Kejjal Naickenpatti Municipality Elementary School and died on 02.01.2007 leaving behind the petitioner and others as his legal heirs. The petitioner made an application dated 31.12.2009 seeking for compassionate appointment. The petitioner produced all his original certificates as early as on 09.01.2012. However, the 3rd respondent, by a communication dated 01.12.2014 informed the petitioner that all the original certificates submitted by the petitioner to a person by name D.D.Rajendran, who was working at the office of the 3rd respondent while leaving the post, has not handed over those documents and therefore, the petitioner was called upon to collect those documents from such person. The petitioner filed W.P.No.16744/2015 before this Court seeking for mandamus directing the respondents to consider his application dated 31.12.2009 seeking compassionate appointment. The said writ petition was disposed of with a direction to the respondents to pass orders on the representation of the petitioner on merits and in accordance with law. Thereafter, the present impugned communication was issued to the petitioner rejecting the application on the ground that the petitioner has not submitted the original certificates.

4. When the matter was taken up on 03.01.2019 for hearing, this Court passed an order, specifically directing the 3rd respondent to be present before this Court in person on 09.01.2019. The said order reads as follows:

The petitioner seeks for compassionate appointment. His request was rejected by the impugned order on the reason that he has not produced the original certificates pertaining to his educational qualification. On the other hand, a perusal of the communication issued by the 3rd respondent dated 01.12.2014 and 06.03.2015 would show that those certificates were already received by one of the staff, namely D.D.Rajendran at the office of the 3rd respondent on 09.01.2012 and however, the said person did not leave those documents at the office. Therefore, the petitioner was called upon to go and collect the said documents from the said D.D.Rajendran. Having said so in those two communications, the 3rd respondent has chosen to reject the request of the petitioner for compassionate appointment by passing the impugned order only on the reason that the petitioner did not produce the original certificates.

2. On the face of the proceedings dated 01.12.2014 and 06.03.2015, it is apparent that those documents were already produced by the

petitioner and they were available in the 3rd respondent office. If the person who dealt with the documents and files got retired and not returned the documents, that cannot be a reason for compelling the petitioner to get those documents from the person who retired from service. The respondents department must take the entire responsibility and get the documents from the possession of such retired person. Thus, this Court finds that the 3rd respondent has acted with utmost irresponsible manner, that too, by playing with the life and future of a poor person who lost his father and seeks compassionate appointment.

3. Learned Government Advocate appearing for the respondents sought time to file counter.

4. This Court is of the view that apart from filing counter, the 3rd respondent should also be personally present before this Court and explain. Therefore, the 3rd respondent is directed to be present before this Court on 09.01.2019.

Post the matter on 09.01.2019 immediately after the motion list.

Accordingly, the matter was listed on 10.01.2019, on which date, the 3rd respondent was personally present before this Court.

5. Mr.M.Elumalai, learned Government Advocate appearing for the respondents on that day submitted that the original certificates are now available with the 3rd respondent office and therefore, the petitioner may be directed to give a fresh representation for considering the claim of compassionate appointment. This Court did not incline to consider the said request of the learned Government Advocate and thus, passed the following order dated 10.01.2019:

In pursuant to the order passed by this Court on 03.01.2019, the matter is listed today and the third respondent viz., Mrs.K.Jayalakshmi, Block Education Officer, Panamarathupatty, Salem, is personally present before this Court.

2. Mr.M.Elumalai, learned Government Advocate appearing for the respondents submitted that the original certificates are now, available with the third respondent office. Therefore, the learned Government Advocate submitted that the petitioner may be directed to give a fresh representation for

considering the claim of the petitioner seeking for compassionate appointment.

3. I am not inclined to consider the said request of the learned Government Advocate to direct the petitioner to give a fresh representation for the simple reason that the impugned order has only rejected the request of the petitioner for compassionate appointment and not returned the application. Further the communications issued by the third respondent dated 01.12.2014 and 06.03.2015 informed the petitioner that the original certificates were already received by one of the staff at the office of the respondents on 09.09.2012 and however, the said person did not leave those documents at the office of the respondents. When such stand was taken by the third respondent through the above said communications, today, it is not known as to how those documents are in the hands of the third respondent. Therefore, this Court doubts about the bona fide of the action of the third respondent in considering the request of the petitioner seeking for compassionate appointment. Therefore, this Court directs the respondents to file an affidavit before this Court explaining the entire state of affairs from the date of filing the application till this date.

4. At this juncture, the learned Government Advocate submitted that the claim of the petitioner will be considered and appropriate orders will be passed.

5. Needless to say that if the claim of the petitioner is considered and appropriate orders is passed before the next hearing date, the same will be taken into consideration while passing further orders in this writ petition. Post this writ petition on 28.01.2019 in the admission list.

Accordingly, the matter is listed today for further hearing.

6. Learned Government Advocate Mr.M.Elumalai, today submitted that an appointment order is issued to the petitioner, on compassionate ground, in Na.Ka.No.001420/Aa2/2019 dated 31.01.2019 to the post of Junior Assistant at Block Education Office, Kadaampatti, Salem. He has also produced a copy of the said order. Learned counsel for the petitioner admits that such

order was issued to the petitioner and that the petitioner has also joined the duty today.

7. Considering the above stated facts and circumstances and in view of the subsequent development taken place namely, the issuance of the appointment order to the petitioner as stated supra, this Writ Petition is disposed of, since the relief sought for by the petitioner is granted by the respondents themselves.

8. Before parting with this case, this Court appreciates the earnest efforts taken by Mr.M.Elumalai, learned Government Advocate in tracing the original certificates and getting the appointment order issued to the petitioner, a poor, who is fighting for the same for the past several years after loosing the sole bread winner of the family viz., his father. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi/gsi

To

- 1.The Chief Educational Officer,
Collectorate Campus,
Salem - 636 001.
- 2.The District Elementary Educational Officer,
District Library Campus,
Salem - 636 007.
- 3.The Assistant Elementary Educational Officer,
O/o The Assistant Elementary Educational Officer,
Panamarathupatty Post,
Salem.

+1cc to Mr.T.Shanmugam, Advocate sr.8683

W.P.No.27468 of 2017

gj(co)
nr 04/03/2019